

# You asked, we answered: the McCleary decision and school funding

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Readers' questions about the 2012 McCleary Supreme Court decision and school funding.

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During last week's [Supreme Court hearing](#) in the long-running McCleary school-funding case, [we asked readers](#) to send questions they had about the decision or public-school funding. We've posted a few of those questions, and the answers, here.

## **How is the Legislature able to fund charter schools but not public schools?**

Charter schools are public schools that receive state tax dollars, but are privately run. In the last Legislative session, lawmakers passed a bill to salvage the state's charter school-law, which had been ruled unconstitutional in September 2015. Under the new law, charter schools are funded through lottery proceeds, rather than money from the state's general fund. Opponents of the state's charter-school law have continually brought up McCleary, calling the charter-school debate a distraction from what they say is a larger issue. The Washington Education Association, the state's largest teachers union, remains opposed to charter schools, saying lawmakers should have focused on complying with the 2012 McCleary decision. Supporters of the charter-school law disagree, arguing that charter schools are part of the solution for providing quality schools, rather than a distraction. Charters and regular public schools would both benefit from additional state dollars to public schools.

## **What power does the court have to meet this obligation with new funds like an income tax or capital gains tax? More theoretically, what real power does the court have over the Legislature? Can the court call upon state police?**

The Supreme Court has the power to uphold and enforce citizens' constitutional rights. But the Supreme Court can't pass bills, which is how taxes are enacted. The state Supreme Court's 2014 order holding the Legislature in contempt of court was a first for both branches. At the time, Gov. Jay Inslee called the order an "unprecedented action...in a critical moment in history." The Supreme Court has since ordered a \$100,000-a-day fine and, earlier this month, summoned the two sides to appear in court to argue whether the contempt order and fines should be lifted or increased. The court also could take other actions, including some the plaintiffs in the McCleary case have suggested: 1. Strike down "unconstitutionally funded school statutes," which would

essentially mean closing schools, and 2. Strike down all tax exemption statutes enacted by the legislature until it fully funds a basic education for K-12 schools.

The state police, at this point, don't have any reason to arrest the lawmakers, said Tom Ahearne, attorney for the plaintiffs in the 2012 case. "The Supreme Court could call on state police, but the question would be 'what are the state police going to do?'" Ahearne said.

**Does "basic education" include the infrastructure required to make basic education happen? Or after McCleary, will school capital costs still be paid from local property taxes?**

That's unknown. In their recent order for both sides to appear in court, the Supreme Court justices specifically asked how much it might cost to build all the classrooms needed to lower class sizes and provide a full day of kindergarten to all incoming students, as the legislature has promised to do. The state argues that the Legislature has not defined capital construction as part of basic education, and it wasn't addressed in the 2012 McCleary decision. School facilities are owned by districts, so decisions about them should be made at the local level, the state argues, adding that it has long helped with those expenses. And those costs vary widely across districts. The plaintiffs argue that the state needs to cover the capital costs because that's part of fully funding basic education.

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